



U.S. Department of Justice

Environment and Natural Resources Division

*Environmental Enforcement Section
P.O. Box 7611
Ben Franklin Station
Washington, DC 20044-7611*

*Telephone: (202) 532-5896
Email: laura.rowley@usdoj.gov*

January 31, 2024

BY ECF

The Honorable Madeline Cox Arleo, U.S.D.J.
U.S. District Court for the District of New Jersey
MLK, Jr., Building & U.S. Courthouse
50 Walnut Street
Newark, NJ 07102

Re: *United States of America, Plaintiff v. Alden Leeds, Inc., et al., Defendants,
Passaic Valley Sewerage Commissioners, et al., Intervenors.* No. 22-cv-7326-
MCA-LDW

Dear Judge Arleo:

We write to bring to the Court's attention a matter related to the Notice of Motion to Enter Consent Decree and associated documents filed today in the above-captioned matter. Last Spring, undersigned counsel for the United States became aware of correspondence dated April 3, 2023, from the organization Protect the Public's Trust sent to three government offices: the U.S. Office of Government Ethics, the Public Integrity Section of the U.S. Department of Justice, and the Office of Inspector General of the U.S. Environmental Protection Agency. The letter raised "concerns about an alleged ethics violation" by former EPA employee David Batson. Of relevance to the pending Motion to Enter, Mr. Batson led the allocation team from the consulting firm AlterEcho that performed an allocation of relative equitable responsibility among certain potentially responsible parties for contamination at the Diamond Alkali Superfund Site, under contract with EPA. The United States made use of that allocation in the negotiation of the settlement embodied in the Consent Decree that is the subject of the Motion to Enter.

The Protect the Public's Trust letter is Attachment A to this letter. Attachment B is a letter dated August 14, 2023, raising similar allegations, from Occidental Chemical Corporation, an intervenor in this matter that opposes the Consent Decree, to the Assistant Attorney General for DOJ's Environment and Natural Resources Division. Attachment C is the undersigned counsel's November 13, 2023, response to the Intervenor OxyChem's August 14 letter. Finally, Attachment D is a copy of email correspondence, with certain redactions, between Justina Fugh, Director of the Ethics Office of the Office of General Counsel for EPA, and an Investigator with the EPA Office of Inspector General – Office of Investigations (one of the three recipients of the

PPT letter).¹ The United States provides this correspondence to the Court in the interest of full candor in connection with its request that the Court enter the proposed Consent Decree. There has been no determination that Mr. Batson committed any ethics violations, as far as undersigned counsel is aware, nor is counsel aware of any ongoing investigations. As discussed further in the Memorandum in Support of United States of America's Motion to Enter Consent Decree, ECF No. 282-1 at Section IV.E., even if at some point Mr. Batson were to be found in violation, the United States submits that this would not undermine the underlying settlement and that the Court should still find that the Consent Decree is fair, reasonable, and consistent with the goals of CERCLA, and should be approved.

We thank the Court for its attention to this matter.

Respectfully submitted,

s/ Laura J. Rowley

LAURA J. ROWLEY

ANDREW W. KEIR

SCOTT BAUER

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Washington, D.C. 20044-7611

(202) 532-5896

ALEX D. SILAGI

Assistant United States Attorney

District of New Jersey

United States Attorney's Office

970 Broad Street, 7th Floor

Newark, New Jersey 07102

(973) 353-6001

cc: Counsel of Record (by ECF)

¹ Counsel for the United States in this case are disclosing this email correspondence with the permission of both Ms. Fugh and the Investigator with the EPA Office of Inspector General – Office of Investigations.